

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION - BAY CITY

IN RE:

MICHAEL B. WHITE and
DARLA K. WHITE,

Debtor.

Case No. 13-21977-dob

Chapter 7 Proceeding
Hon. Daniel S. Opperman

MICHAEL B. WHITE,

Plaintiff,

v.

Adv. Proc. No. 21-2011

DONALD KNAPP, JR. et al.,

Defendants.

ORDER DENYING DEBTOR'S MOTION FOR
RECONSIDERATION OF OPINIONS AND ORDERS ENTERED
ON FEBRUARY 11, 2022 (DOCKET NOS. 110, 111, AND 112)

On February 11, 2022, the Court entered the following Opinions and/or Orders:

- (1) **Docket No. 110**: Opinion and Order Regarding Amended Motion To Dismiss Adversary Case Filed by Donald Knapp, Koral Knapp, Adam D. Flory, David J. Fisher and Smith Bovill, P.C. (**Docket No. 44**);
- (2) **Docket No. 111**: Order Denying Plaintiff Michael White's Motions To Strike (Docket Nos. 55, 57, 59, and 66); and
- (3) **Docket No. 112**: Opinion and Order Regarding Amended Motion To Dismiss Adversary Case Filed by Collene K. Corcoran.

("Opinions/Orders").

The effect of these Opinions/Orders was dismissal of all of Plaintiff's claims against all Defendants. Accordingly, the Clerk closed this Adversary Proceeding on February 11, 2022.

Plaintiff Michael White filed a Motion for Reconsideration of the Opinions/Orders, requesting "reversal" of them. Plaintiff alleges nine "errors made by the bankruptcy court" on Pages 4 through 10 of his Motion and Brief, and then further describes his view of these "errors" on Pages 11 through 23. The Court has reviewed Plaintiff's Motion and Brief,¹ and for the following reasons, denies reconsideration of the Opinions/Orders.

Plaintiff cites Local Bankruptcy Rule 9024-1 and **Federal Rules of Civil Procedure 59(e)** and 60(b) in support of his Motion. Rule 60(b) requires a 14-day notice and opportunity for hearing under E.D. Mich. LBR 9014-1, which was not done. Thus, the Court will analyze this Motion under Local Rule 9024-1 And Rule 59(e), which do not require such notice pursuant to Local Rule 9024-1(a)(2) and (b), respectively.²

Pursuant to Rule 9024-1(a) of the Local Rules for the U.S. Bankruptcy Court for the Eastern District of Michigan, a motion for reconsideration may be filed within fourteen (14) days after the order to which it objects is issued. It should be granted if the movant demonstrates that the Court and the parties have been misled by a palpable defect and that a different disposition of the case must result from a correction of such palpable defect. A motion that merely presents the same issues already ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. To establish a "palpable defect," the moving party generally must point to a: "(1) clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or

¹ On April 8, 2022, Plaintiff filed a "FRE 201 Judicial Notice Supplement" to the Motion for Reconsideration, which the Court has also considered.

² Even if Plaintiff had properly filed his Motion with the required notice as a Rule 60(b) motion, the Court concludes there is no basis under the specific subsections alleged, subsections (b)(6) and (d)(1), to set aside the Opinions/Orders. Under Rule 60(b)(6), granting relief for "any other reason that justifies relief," the Court finds no basis for relief here for the reasons discussed in this Order as "[R]ule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof." *Jinks v. Alliedsignal, Inc.*, **250 F.3d 381, 385** (6th Cir. 2001) (citation omitted). The Court otherwise finds no basis under Rule 60(d)(1) to exercise its power to "entertain an independent action to relieve [Plaintiff] from" the Opinions/Orders.

(4) a need to prevent manifest injustice.” *Henderson v. Walled Lake Consol. Schools*, 469 F.3d 479, 496 (6th Cir. 2006) (quoting *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005) (analyzing “palpable defect” standard in the context of a Federal Rule of Civil Procedure 59(e) motion to alter or amend judgment, which was held to be consistent with the applicable local rule “palpable defect” reconsideration standard). A “palpable defect” is “obvious, clear, unmistakable, manifest, or plain.” *Michigan Dept. of Treasury v. Michalec*, 181 F. Supp.2d 731, 734 (E.D. Mich. 2002) (citing *Marketing Displays, Inc. v. Traffix Devices, Inc.*, 971 F. Supp.2d 262, 278 (E.D. Mich. 1997)).

The granting of a Rule 59(e) motion “is an extraordinary remedy and should be used sparingly.” This is because a motion pursuant to Rule 59(e) “serve[s] the narrow purpose of allowing a party ‘to correct manifest errors of law or fact or to present newly discovered evidence.’” *Pequeno v. Schmidt (In re Pequeno)*, 240 Fed. Appx. 634, 636 (5th Cir. 2007) (internal citations and footnotes omitted). See also *Hansen v. Moore (In re Hansen)*, 368 B.R. 868 (B.A.P. 9th Cir. 2007).

“Motions for reconsideration are ‘not an opportunity to re-argue a case’ and should not be used by the parties to ‘raise arguments which could, and should, have been made before judgment issued.’” *In re Grady*, 417 B.R. 4, 6 (Bankr. W.D. Mich. Sept. 29, 2009) (quoting *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)). “Nor are motions for reconsideration appropriate merely to let the losing party supplement the evidentiary record that was before the court.” *Id.* (citations omitted).

A motion to reconsider may not be used to present a new legal theory for the first time or to raise legal arguments which could have been raised in connection with the original motion. *Matter of Sisson*, 668 F. Supp. 1196, 1197 (N.D. Ill. 1983) (citing *Publishers Resource v. Walker–Davis Publications*, 762 F.2d 557, 561 (7th Cir. 1985)). Also, a motion to reconsider may not be used to rehash the same arguments presented the first time or simply to express the opinion that

the court was wrong. *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986). The standard for granting a motion to reconsider is strict in order to preclude repetitive arguments that have already been fully considered by the court. *Park South Tenants Corp. v. 200 Central Park South Associates*, 754 F. Supp. 352, 354 (S.D.N.Y.1991); see also *In re Armstrong Store Fixtures Corp.*, 139 B.R. 347, 349-50 (Bankr. W.D. Pa. 1992) (noting that “[t]he court does not have the luxury of treating its first decision as a dress rehearsal for the next time”).

In his Motion, Plaintiff asserts that this Court palpably erred in fact and law, reiterating his previous arguments or asserting new arguments that could have been raised previously. The Court recognizes that filings by pro se litigants are to be construed liberally, *Owens v. Keeling*, 461 F.3d 763, 776 (6th Cir. 2006). Giving the most liberal reading of the previous pleadings and the instant Motion filed by Plaintiff, the Court finds no basis for reconsideration. Specifically as to **Docket No. 112**, Opinion and Order Regarding Amended Motion To Dismiss Adversary Case Filed by Collene K. Corcoran, the fundamental issue of Plaintiff’s lack of standing, and thus this Court’s lack of subject matter jurisdiction, cannot be overcome by Plaintiff. As to **Docket No. 110**, Opinion and Order Regarding Amended Motion To Dismiss Adversary Case Filed by Donald Knapp, Koral Knapp, Adam D. Flory, David J. Fisher and Smith Bovill, P.C. (**Docket No. 44**), Plaintiff simply does not agree with this Court’s findings and conclusions. This does not give Plaintiff the opportunity to rehash arguments or to present a new legal theory or to raise legal arguments which could have been raised in connection with the original motions. Finally, the Order Denying Plaintiff’s Motions To Strike, **Docket No. 111** was based upon the jurisdictional finding of mootness, a conclusion that logically followed the other two decisions. As there is no basis for reconsideration of the other two, there cannot be for this third decision.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of the February 11, 2022 Opinions/Orders is DENIED.

Signed on April 25, 2022



/s/ Daniel S. Opperman

**Daniel S. Opperman
United States Bankruptcy Judge**